

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 10410 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

NANDKISHORE HASMUKHLAL MISTRY - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR ARPIT A KAPADIA for Applicant(s) : 1,
 MR.DIPEN DESAI APP for Respondent(s) : 1,
 NOTICE SERVED BY DS for Respondent(s) : 2,
 MR PRADEEP PATEL for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 18/09/2007

ORAL JUDGMENT

1. RULE. Learned counsel as well as learned A.P.P. Mr.Dipen Desai, appearing for the respondents, waive service.

2. The petitioner has challenged, under the

provisions of Section 439(2) of the Code of Criminal Procedure, 1973 (for short, "the Code"), order dated 21.08.2007 of learned Additional Sessions Judge, Vadodara in Criminal Misc. Application No.934 of 2007 granting anticipatory bail under Section 438 of the Code to respondent No.2 herein on condition, *inter alia*, of reporting before P.S.O. of Vadi Police Station on or before 27.08.2007. It was submitted by learned counsel Mr.Arpit A. Kapadia, appearing for the petitioner, that in view of the alleged role played by the respondent concerned, he ought not to have been granted anticipatory bail and the *prima facie* conclusion in the impugned order that the respondent did not appear to have been involved in serious offence of cheating was erroneous. It is stated in the petition that the respondent had not made himself available before Vadi Police Station on or before 27.08.2007 and hence the condition for grant of anticipatory bail was already violated.

3. It was submitted, on instructions, by learned A.P.P. Mr.Dipen Desai that the respondent had reported to the police station on or before 27.08.2007 but had not approached the officer concerned. It is stated on oath by filing an affidavit on behalf of respondent No.2 that the respondent had, in fact, not only reported on

25.08.2007 but made written report to the police station officer of Vadi Police Station about his presence pursuant to the impugned order.

4. In view of the above facts and circumstances, it is clear that the respondent has made himself available for the purpose of investigation, that the investigation is still carried on and that, under the conditions of the impugned order itself, the respondent is required to apply for regular bail within 10 days of his arrest and release under the impugned order. Therefore, pending investigation, without entering into merits of the contentions about *prima facie* case against the respondent, it appears to be in the interest of justice that the respondent should again be required to report to the Investigating Officer at D.C.B. Police Station, Nr.Swaminarayana Temple, Vadodara on **27.09.2007** between 11:00 a.m. to 2:00 p.m. as suggested by learned A.P.P., on instruction of the Investigating Officer, who is personally present in the Court. As far as the other contentions are concerned, it would be open for the parties to canvass the same before the appropriate Court at the time of hearing of the regular bail application that may have to be moved by the respondent and, as and when such application is made, that shall be decided on its

own merits in accordance with law after perusal of relevant material revealed during the course of investigation.

5. With the above observation, the petition is partly allowed to the extent that condition No.1 contained in the impugned order shall stand modified as aforesaid. Rule is made absolute accordingly and interim relief is vacated with no order as to costs.

(D.H.WAGHELA, J.)

Hitesh